IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.70 of 1998
Date of decision:31.10.2006

Commissioner of Income tax, Jalandhar

....Petitioner

versus

M/s. Saqi Brothers, Ludhiana

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. SK Garg Narwana, Advocate, for the revenue.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh arising out of its order dated 28.7.1995 in ITA No.279/Chandi/90, for the assessment year 1982-83:-

> "Whether, on the facts and in the circumstances of the case, the learned ITAT is right in law in deleting the addition of Rs.2,67,219/- which was confirmed by the learned CIT(A) in the trading account on account of unaccounted sales made by the assessee outside the books of account?"

The assessee derived income from non-ferrous metal, electroplating and polish materials. Its assessment was finalised by the Assessing Officer on 25.3.1985 but on appeal, the AAC set aside the order of assessment and directed de novo assessment after enquiry of books of account and also taking into account proposal made by the assessee to make disclosure under the Amnesty Scheme. The assessee filed revised return on 21.3.1986. The Assessing Officer issued notice under section 148 of the Income Tax Act, 1961 (for short, 'the Act') on 15.7.1986 to assess escaped income.

In reply, the assessee submitted that revised return be treated as return in response to notice under section 148 of the Act. It was further stated that to avoid prolonged litigation, a sum of Rs.50,000/- was surrendered against the additions made over and above the returned income.

The Assessing Officer completed the assessment on 30.3.1989. Apart from amount of Rs.50,000/- surrendered by the assessee, addition of Rs.2,67,219/- on account of unexplained income from stock was made. This was upheld by the CIT(A). On further appeal to the Tribunal, addition of Rs.2,67,219/- made by the Assessing Officer was set aside. It was held that working out of monthwise trading results was not called for and thus, no addition was justified. Relevant finding of the Tribunal is as under:-

> "We have carefully considered the submissions of both the sides as also the facts on record. In our opinion, the whole exercise of working out monthwise trading results was meaningless because certain things had to be assumed by the assessing officer in this regard. It had, for instance, to be assumed that the gross profit rate of the assessee would be uniform throughout the year. In the case of Bhalla Brothers (supra), such an exercise was made and it was found that on a particular date there was negative stock. The Assessing Officer made an addition in this regard. The Tribunal, however, deleted the addition and the High Court held that the addition had been properly deleted and no question of law arose. So far as the first period is concerned, we find that the Assessing Officer had arrived at a situation where there was a negative stock. In such a situation, no addition can be made as held by the Punjab and Haryana High Court in the case of Bhalla Brothers (supra). Even otherwise, if the assessee had shown more purchases in the books of account then the Assessing Officer should have no grievance because the unaccounted sales and the profit thereon had already been declared by the assessee in the excess sales shown. In the second period also even if there was any discrepancy, the assessing officer can not make an addition in respect of the discrepancy as a whole. He has to take into consideration the quantum of sales which may have been effected outside the books of account and then apply a suitable gross profit rate. That was precisely what was done in the case of Tarachand Shantilal (supra). At the most, the Assessing Officer could have estimated the sales made outside the books of account and applied a suitable gross profit rate. If that basis is adopted for making the addition, the addition would hardly work out to Rs.12000/- against which the

> assessee itself had offered a sum of Rs.50,000/- which is quite adequate and reasonable. We accordingly hold that nothing over and above Rs.50,000/- offered by the assessee itself could be sustained as addition in the assessee's hands. The addition of Rs.2,67,219/- is accordingly deleted."

We have heard learned counsel for the revenue.

The finding recorded by the Tribunal is primarily a finding of fact. It has not been shown that the reasons given by the Tribunal are, in any manner, irrelevant or non-existent. The finding cannot be held to be perverse.

The question referred is, thus, answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

October 31, 2006
'gs'

(Rajesh Bindal)
Judge